

United States District Court
Northern District of California

1 **WILMER CUTLER PICKERING**
2 **HALE AND DORR LLP**
3 SONAL N. MEHTA (SBN 222086)
4 Sonal.Mehta@wilmerhale.com
5 2600 El Camino Real, Suite 400
6 Palo Alto, California 94306
7 Telephone: (650) 858-6000

8
9
10 DAVID Z. GRINGER (*pro hac vice*)
11 David.Gringer@wilmerhale.com
12 7 World Trade Center
13 250 Greenwich Street
14 New York, New York 10007
15 Telephone: (212) 230-8800

16
17 ARI HOLTZBLATT (*pro hac vice*)
18 Ari.Holtzblatt@wilmerhale.com
19 MOLLY M. JENNINGS (*pro hac vice*)
20 Molly.Jennings@wilmerhale.com
21 1875 Pennsylvania Ave NW
22 Washington, DC 20006
23 Telephone: (202) 663-6000

24
25 *Attorneys for Defendant Meta Platforms, Inc.*

26
27 **QUINN EMANUEL URQUHART &**
28 **SULLIVAN, LLP**
1 Stephen A. Swedlow (*pro hac vice*)
2 stephenswedlow@quinnmanuel.com
3 191 N. Wacker Drive, Suite 2700
4 Chicago, IL 60606
5 (312) 705-7400

6
7
8
9
10 **HAGENS BERMAN SOBOL SHAPIRO LLP**
11 Shana E. Scarlett (Bar No. 217895)
12 shanas@hbsslaw.com
13 715 Hearst Avenue, Suite 202
14 Berkeley, CA 94710
15 (510) 725-3000

16
17 *Interim Co-Lead Consumer Class Counsel*

18
19 **BATHAEE DUNNE LLP**
20 Yavar Bathaee (Bar No. 282388)
21 yavar@bathaeedunne.com
22 445 Park Avenue, 9th Floor
23 New York, NY 10022
24 (332) 322-8835

25
26 **SCOTT+SCOTT ATTORNEYS AT LAW LLP**
27 Kristen M. Anderson (Bar No. 246108)
28 kanderson@scott-scott.com
1 230 Park Avenue, 17th Floor
2 New York, NY 10169
3 (212) 233-6444

4
5 *Interim Co-Lead Advertiser Class Counsel*

6
7 **UNITED STATES DISTRICT COURT**
8
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 **SAN FRANCISCO DIVISION**

11 MAXIMILIAN KLEIN, et al.

12 Plaintiff,

13 v.

14 META PLATFORMS, INC.,

15 Defendant.

16 Case No. 3:20-cv-08570-JD

17 **[PROPOSED] ORDER REGARDING**
18 **DISCOVERY OF ELECTRONICALLY**
19 **STORED INFORMATION**

20 Judge: Hon. James Donato

1 **1. PURPOSE**

2 This Order (“ESI Protocol Order”) will govern discovery of electronically stored information
3 (“ESI”) and hard copy documents in this case as a supplement to the Federal Rules of Civil
4 Procedure, this Court’s Guidelines for the Discovery of Electronically Stored Information, and any
5 other applicable orders and rules.¹

6 **2. COOPERATION AND PROPORTIONALITY**

7 The Parties are aware of the importance the Court places on cooperation and commit to cooperate
8 in good faith throughout the matter consistent with this Court’s Guidelines for the Discovery of ESI,
9 *see, e.g.*, §§ 1.01-.03, and to promote the “just, speedy, and inexpensive determination” of this
10 action, as required by Fed. R. Civ. P. 1.

11 **3. ESI LIAISONS**

12 a. **Designation:** Each Party will designate an ESI Liaison within 10 days of the entry
13 of the order adopting this Stipulation.

14 b. **Duties of ESI Liaison:** Each ESI Liaison will be prepared to participate in the meet
15 and confer on eDiscovery related matters and the resolution of any e-discovery disputes or
16 ESI issues that may arise (or designate another person as primarily responsible), be
17 knowledgeable about the party’s eDiscovery efforts, have reasonable access to personnel
18 most knowledgeable about the Party’s electronic systems and capabilities in order to, as
19 appropriate, explain those systems and answer relevant questions, including the location,
20 nature, accessibility, format, collection, search methodologies, and production of ESI in this
21 matter, and have reasonable access to those who are knowledgeable about the technical
22 aspects of eDiscovery, including electronic document storage, organization, and format
23 issues, and relevant information retrieval technology, including search methodology. The
24 parties will rely on the liaisons, as needed, to confer about ESI and to help resolve disputes
25 without court intervention.

26 **4. PRESERVATION**

27 The Parties have discussed their preservation obligations and needs and agree that preservation of
28 relevant ESI will be reasonable and proportionate. To reduce the costs and burdens of preservation
29 and to ensure proper ESI is preserved the parties agree that:

30 a. Parties shall preserve non-duplicative, relevant information currently in their
31 possession, custody, or control; however, parties are not required to modify, on a going-

32 ¹ Facebook has re-produced to Plaintiffs documents previously produced to the Federal Trade
33 Commission and House Judiciary Committee in the format those documents were originally
34 provided to the FTC and HJC. For the avoidance of doubt, this ESI Protocol does not apply to those
35 productions. Likewise, in the event that a Party later re-produces materials previously produced in
36 the course of an investigation or other litigation, it shall not be obligated by this ESI Protocol to alter
37 the metadata with which those documents were originally produced. The parties agree to meet and
38 confer regarding any disputes over such re-productions and to submit any disputes to the Court
39 pursuant to the discovery dispute resolution procedure outlined in Judge Donato’s Standing Order
40 for Civil Cases.

1 forward basis, the procedures used by them in the usual course of business to back up and
 2 archive data.

3 b. Subject to and without waiving any protection described in this same section above,
 4 the parties will endeavor to agree upon a date limitation for the preservation of ESI.

5 c. The parties will endeavor to agree upon a list of the types of ESI they believe should
 6 be preserved and the custodians, or general job titles or descriptions of custodians (sufficient
 7 to identify each custodian), for whom they believe ESI should be preserved. The parties
 8 shall add or remove custodians as reasonably necessary.

9 d. The Parties acknowledge that Facebook is subject to various privacy regulations and
 10 court orders that require the disposition of identifiable user data. To the extent that
 11 identifiable user data subject to routine disposition as required by privacy regulations and
 12 court orders is identified as relevant to the claims or defenses in this case, the parties will
 13 meet and confer on preservation of such information as it exists at that time, including the
 14 feasibility of such preservation and the type and import of the user data implicated.

15 e. The parties agree, based on mutual representation of the parties' counsel, that,
 16 generally, the following sources of data are not reasonably accessible and need not be
 17 preserved, collected, processed, reviewed and/or produced:

- 18 1. Deleted, slack, fragmented, or unallocated data only accessible by
 forensics.
- 2. Random access memory (RAM), temporary files, or other ephemeral data
 that are difficult to preserve without disabling the operating system.
- 3. On-line data such as temporary internet files, history, cache, cookies, and
 the like.
- 4. Data in the metadata fields that are frequently updated automatically
 without end user intervention, including, but not limited to: last opened
 dates and times, last printed dates and times, last modified dates and
 times, and last modified by.
- 5. Server, system, or network logs.
- 6. Dynamic fields in databases or log files not stored or retained in the usual
 course of business.
- 7. Information created or copied during the routine, good-faith performance
 of processes for the deployment, maintenance, retirement, and/or
 disposition of computer equipment by the party, to the extent such
 information is duplicative of information that resides in a reasonably
 accessible data source.
- 8. Systems no longer in use that cannot be accessed.

24 5. **SEARCH**

25 a. The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier
 26 if appropriate, they will meet and confer about methods to search ESI in order to identify
 27 ESI that is subject to production in discovery and filter out ESI that is not subject to
 28 discovery. The producing party will disclose to the receiving party if they intend to use
 Technology Assisted Review ("TAR") to filter out non-responsive documents. The parties
 will meet-and-confer in good faith regarding custodians. Each party will provide a list of
 proposed document custodians and non-custodial document sources (e.g., centralized

1 document sources other than an individual document custodian's files) reflecting those
2 employees or sources most likely to have non-duplicative information and/or documents
3 responsive to an agreed-on or Court-ordered scope of Rule 34 Requests.

4 b. If, after the Parties identify initial document custodians, a Requesting Party believes
5 that additional document custodians or sources should be added, then the Requesting Party
6 shall advise the Producing Party in writing of the proposed additional document custodians
7 or sources and the basis for the request. The parties will meet and confer about the proposed
8 additional custodians. Any disputes over additional custodians that cannot be resolved
9 between the parties during meet and confer may be presented to the Court in accordance
10 with the procedure outlined in Judge Donato's Standing Order for Civil Cases.

11 c. The parties will meet-and-confer in good faith regarding search terms. If the
12 Requesting Party objects to the sufficiency of the Producing Party's proposed search terms,
13 the Requesting Party may propose modifications to the Producing Party's terms, or a list of
14 additional terms. The parties will meet-and-confer in good faith about the Requesting
15 Party's proposed changes. Any disputes over search terms that cannot be resolved between
16 the parties during meet and confer may be presented to the Court in accordance with the
17 procedure outlined in Judge Donato's Standing Order for Civil Cases.

18 d. Nothing in this Order may be construed or interpreted as precluding a producing
19 party from performing a responsiveness review to determine if documents captured by
20 search terms are in fact relevant to the requesting party's request. Nothing in this Order
21 precludes a party from using Technology Assisted Review ("TAR") to fulfill their document
22 production obligations. Similarly, nothing may be construed or interpreted as precluding a
23 producing party from performing a privilege review of documents determined to be relevant
24 by any means. Further, nothing in this Order shall be construed or interpreted as requiring
25 the production of all documents captured by any search term if that document is in good faith
26 and reasonably deemed not relevant to the requesting party's request or privileged.

27 e. Each party will use its best efforts to filter out common system files and application
28 executable files by using a commercially reasonable hash identification process. Hash
values that may be filtered out during this process are located in the National Software
Reference Library ("NSRL") NIST hash set list.

29 f. De-Duplication: Each party is required to produce only a single copy of a responsive
30 document and each party may de-duplicate responsive ESI (based on MD5 hash values at
31 the document level) across custodians. For emails with attachments, the hash value is
32 generated based on the parent/child document grouping. To the extent that de-duplication
33 through MD5 hash values is not possible, the parties shall meet and confer to discuss any
34 other proposed method of de-duplication. A producing Party will make a reasonable effort
35 to identify all custodians who were in possession of any de-duplicated documents through
36 an appropriate load file field such as DuplicateCustodian or CustodianAll/Other.
37 Additionally, all BCC recipients whose names would have been included in the BCC
38 metadata field, to the extent such metadata exists, but are excluded because of
39 horizontal/global de-duplication, must be identified in the BCC metadata field specified in
40 Appendix 1 to the extent such metadata exists. In the event of rolling productions of
41 documents or ESI items, the producing Party will, as needed, supplement the load files with
42 updated CustodianAll or CustodianOther information, as well as BCC information to the
43 extent such metadata exists. Duplicate custodian information may be provided by a metadata

1 “overlay” and will be provided by a producing Party after the Party has substantially
 2 completed its production of ESI.

3 g. Email Threading: Where multiple email messages are part of a single chain or
 4 “thread,” a party is only required to produce the most inclusive message (“Last In Time
 5 Email”) and need not produce earlier, less inclusive email messages or “thread members”
 6 that are fully contained, including attachments and including identical senders and
 recipients, within the Last In Time Email. Only email messages for which the parent
 document and all attachments are contained in the Last In Time Email will be considered
 less inclusive email messages that need not be produced.

7 h. On-site inspection will not be permitted absent a demonstration by the requesting
 8 party of specific need and good cause or by agreement of the parties.

9 **6. PRODUCTION FORMAT**

10 The parties agree to produce documents in the formats described in Appendix 1 to this Order. If
 11 particular documents warrant a different format, the parties will cooperate to arrange for the
 12 mutually acceptable production of such documents. The parties agree, to the extent practicable, not
 to materially degrade the searchability of documents as part of the document production process.

13 **7. PHASING**

14 When a party propounds discovery requests pursuant to Fed. R. Civ. P. 34, the parties agree to phase
 15 the production of ESI by producing documents on a rolling basis. Following the initial production,
 the parties will continue to prioritize the order of subsequent productions.

16 **8. DOCUMENTS PROTECTED FROM DISCOVERY**

17 Nothing in this Order requires disclosure of irrelevant information or relevant information protected
 18 by the attorney-client privilege, work-product doctrine, or any other applicable privilege or
 19 immunity. The parties do not waive any objections to the production, discoverability, admissibility,
 or confidentiality of documents and ESI.

20 **9. LIMITATIONS AND NON-WAIVER**

21 a. Pursuant to the terms of this ESI Protocol, information regarding search process and
 22 ESI practices may be disclosed, but compliance with this ESI Protocol does not constitute a
 23 waiver, by any Party, of any objection to the production of particular ESI for any reason,
 24 including that it is irrelevant, undiscernable, or otherwise inadmissible, unduly burdensome
 or not reasonably accessible, or privileged, nor does it constitute a waiver of any right to
 discovery by any Party.

25 b. Nothing in this ESI Protocol shall be construed to affect the discoverability of
 26 information or the admissibility of discoverable information.

27 c. Nor shall anything in this ESI Protocol be construed to affect the authenticity of any
 document or data.

28 Finally, nothing in this Order requires the parties to make changes to or modify productions made
 in other cases and reproduced here including the reproductions of Facebook’s productions to the

FTC and HJC. However, if a Receiving Party raises an issue regarding the usability or format of a produced Document, the parties will meet and confer regarding whether an alternative form of production is necessary or appropriate and seek Court intervention only if necessary

10. MODIFICATION

This Stipulated Order may be modified by a Stipulated Order of the parties or by the Court for good cause shown.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED:

Hon. James Donato
United States Judge

APPENDIX 1: PRODUCTION FORMAT

A. **Production Components.** Except as otherwise provided below, ESI shall be produced in accordance with the following specifications:

1. an ASCII delimited data file (.DAT) with ASCII 020 for the comma character and ASCII 254 for the quote character, with all values in a multi-value field separated by a semi-colon ASCII 059 (with the use of commas and quotes as delimiters not acceptable using standard delimiters) and encoded in UTF-8;
2. an image load file (.OPT) that can be loaded into commercially acceptable production software (e.g. Concordance);
3. TIFF images;
4. document level .TXT files for all documents containing extracted full text or OCR text;
5. Parent-child relationships will be maintained in production;
6. Entire document families must be produced, even if only the parent email or an attachment to an email is responsive, except (1) junk files and non-user-created content routinely excluded during processing, and (2) documents that are withheld on the basis of attorney-client privilege or work product protection.

If a particular document warrants a different production format, the parties will cooperate in good faith to arrange for a mutually acceptable production format.

B. **Production Media and Access Controls.**

1. Documents shall be encrypted and produced through electronic means, such as secure file sharing methods (e.g. FTP), or on CD, DVD, flash drive or external hard drive (“Production Media”). Each piece of Production Media shall identify a production number corresponding to the production volume (e.g. “VOL001”). Each piece of Production Media shall also identify: (a) the producing party’s name; (2) the production date; (3) the Bates Number range of the materials contained on the Production Media.
2. Nothing in this Order will preclude or impair any and all protections provided the parties by any Protective Order(s) agreed and entered into by the parties. Any data produced by the producing party must be protected in transit, in use, and at rest by all in receipt of such data. Parties will use best efforts to avoid the unnecessary copying or transmittal of produced documents. Any copies made of produced data must be kept on media or hardware employing whole-disk or folder level encryption or otherwise secured on information systems and networks in a manner consistent with the best practices for data protection. If questions arise, Parties will meet and confer to ensure security concerns are addressed prior to the exchange of any documents.

C. **Data Load Files/Image Load Files.** All production items will be provided with a delimited data file or “load file,” which will include both an image cross-reference load file (such as an Opticon file) and a metadata (.dat) file with the metadata fields identified below on the

1 document level to the extent available. Each TIFF in a production must be referenced in the
 2 corresponding image load file. The total number of documents referenced in a production's
 3 data load file should match the total number of designated document breaks in the image
 4 load file(s) in the production. The total number of pages referenced in a production's image
 5 load file should match the total number of TIFF files in the production. All images must be
 6 assigned a unique Bates number that is sequential within a given document and across the
 7 production sets. The Bates Numbers in the image load file must match the corresponding
 8 documents' beginning Bates numbers in the data load file. The total number of documents
 9 in a production should match the total number of records in the data load file. Load files
 10 shall not vary in format or structure within a production, or from one production to another.
 11

12 D. **Metadata Fields.** With the exception of hard copy paper documents, which are separately
 13 addressed in paragraph L below, each of the metadata and coding fields set forth below that
 14 can be extracted shall be produced for each document to the extent reasonably practicable.
 15 The parties are not obligated to populate manually any of the fields below if such fields
 16 cannot be extracted from a document, with the exception of the following: (a) BEGBATES,
 17 (b) ENDBATES, (c) BEGATTACH, (d) ENDATTACH, (e) CUSTODIAN,
 18 (f) ALLCUSTODIANS, (g) CONFIDENTIALITY, (h) REDACTIONS,
 19 (i) NATIVEFILEPATH, and (j) TEXTFILEPATH, which should be populated by the party
 20 or the party's vendor. The parties will make reasonable efforts to ensure that metadata fields
 21 automatically extracted from the documents correspond directly to the information that
 22 exists in the original documents.
 23

| Field Name ² | Field Description |
|-------------------------|---|
| BEGBATES | Beginning Bates number as stamped on the production image |
| ENDBATES | Ending Bates number as stamped on the production image |
| BEGATTACH | First production Bates number of the first document in a family |
| ENDATTACH | Last production Bates number of the last document in a family |

26 ² Field Names can vary from system to system and even between different versions of
 27 systems. Thus, Parties are to be guided by these Field Names and Field Descriptions when
 28 identifying the metadata fields to be produced for a given document pursuant to this ESI Protocol
 Order.

| | | |
|----|-----------------|---|
| 1 | CUSTODIAN | Individual from whom the document originated |
| 2 | ALLCUSTODIAN(S) | Individual(s) whose documents de-duplicated out |
| 3 | CONFIDENTIALITY | Confidentiality designation assigned to document |
| 4 | HASHVALUE | MD5 hash value of document |
| 5 | AUTHOR | Any value populated in the Author field of the document properties (Edoc or attachment only) |
| 6 | DATECREATED | Date the document was created (format: MM/DD/YYYY) (Edoc or attachment only) |
| 7 | DATEMODIFIED | Date when document was last modified according to filesystem information (format: MM/DD/YYYY) (Edoc or attachment only) |
| 8 | FROM | The name and email address of the sender of the email |
| 9 | TO | All recipients that were included on the “To” line of the email |
| 10 | CC | All recipients that were included on the “CC” line of the email |
| 11 | BCC | All recipients that were included on the “BCC” line of the email |
| 12 | DATERECEIVED | Date email was received (format: MM/DD/YYYY) |
| 13 | | |
| 14 | | |
| 15 | | |
| 16 | | |
| 17 | | |
| 18 | | |
| 19 | | |
| 20 | | |
| 21 | | |
| 22 | | |
| 23 | | |
| 24 | | |
| 25 | | |
| 26 | | |
| 27 | | |
| 28 | | |

| | | |
|----|-----------------|--|
| 1 | DATESENT | Date email was sent (format: MM/DD/YYYY) |
| 2 | FILESIZE | The original file size of the produced document |
| 3 | REDACTIONS | Indicate Yes if document redacted |
| 4 | NATIVEFILEPATH | Native File Link (Native Files only) |
| 5 | TEXTFILEPATH | Path to extracted text/OCR file for document |
| 6 | EMAIL THREAD ID | Unique identification number that permits threading of email conversations. For instance, unique MS Outlook identification number ("PR_CONVERSATION_INDEX") is 22 bytes in length, followed by zero or more child blocks each 5 bytes in length, that facilitates use of email threading. (Microsoft application documents only) |
| 7 | EMAILSUBJECT | Subject line of email. |
| 8 | TIMESENT | Time email was sent. |
| 9 | TIMEZONEUSED | Time zone used to standardize date/time during document processing. |
| 10 | RECEIVETIME | Time email was received. |
| 11 | FILENAME | File name of the edoc or email. |
| 12 | TITLE | Any value populated in the Title field of the document properties. |

| | |
|-------------------------|---|
| SUBJECT | Any value populated in the Subject field of the document properties. |
| DOCEXT | File extension of the document. |
| WITHHELD PLACEHOLDER | To the extent a document is fully withheld (on the basis of privilege or otherwise), this field must be populated with a "Y." |

E. **TIFFs.** Documents that exist only in hard copy format shall be scanned and produced as TIFFs. Documents that exist as ESI shall be converted and produced as TIFFs, except as provided below. The imaged data shall retain all attributes of the native or hard-copy file, such as document breaks, to the extent reasonably practicable. To the extent reasonably practicable, produced TIFF images will show all text and images that are visible in the form in which the electronic document was last saved, with the exception of redacted portions. Hidden content, tracked changes or edits, comments, notes, and other similar information, shall, to the extent reasonably practicable, also be imaged so that such content is viewable on the image file. Unless excepted below, single page, black and white, Group IV TIFFs should be provided, at least 300 dots per inch (dpi) for all documents, with corresponding multi-page text and necessary load files. Each TIFF image shall be named according to a unique corresponding Bates number associated with the document. Each image shall be branded according to the Bates number and the agreed upon confidentiality designation. Original document orientation should be maintained (i.e., portrait to portrait and landscape to landscape). Documents that are difficult to render in TIFF because of technical issues, or any other documents that are impracticable to render in TIFF format, may be produced in their native format with a placeholder TIFF image stating "Document Produced Natively." A producing Party retains the option to produce ESI in alternative formats if so agreed by the requesting Party, which may include native format, or a combination of native and TIFF formats. Where the TIFF image is unreadable or has materially degraded the quality of the original, the producing party shall provide a higher quality TIFF image or the native or original file.

F. **Color.** Documents or ESI containing color need not be produced initially in color. However, if an original document or ESI item contains color markings and it is necessary to see those markings in their original color to understand the meaning or content of the document, then the requesting Party may, in good faith, request that the document or ESI item be produced in its original colors. For such documents, the requesting Party shall provide a list of Bates numbers of the imaged documents sought to be produced in color. The production of documents and/or ESI in color shall be made in single-page JPEG format (300 DPI). All requirements for productions stated in this ESI Protocol regarding productions in TIFF format apply to any productions of documents and/or ESI in color made in such an alternative format. Requests that a document be produced in color for the reasons set forth in this Paragraph F will not be unreasonably denied by the producing Party. If a

1 producing Party wishes to object, it may do so by responding in writing and setting forth its
 2 objection(s) to the production of the requested document in color.

3 G. **Text Files.** A single multi-page text file shall be provided for each document, and the
 4 filename should match its respective TIFF filename. When possible, the text of native files
 5 should be extracted directly from the native file. Text files will not contain the redacted
 6 portions of the documents. A commercially acceptable technology for optical character
 7 recognition “OCR” shall be used for all scanned, hard copy documents and for documents
 8 with redactions.

9 H. **Native Files.** Spreadsheets (e.g. MS Excel) and presentation files (e.g., MS PowerPoint)
 10 will be produced in native format unless redacted, in which instance, such documents shall
 11 be produced in TIFF with OCR Text Files. To the extent that they are produced in this
 12 action, audio, video, and multi-media files will be produced in native format. Native files
 13 shall be produced with a link in the NATIVEFILEPATH field, along with extracted text
 14 (where extracted text is available) and applicable metadata fields set forth in Paragraph D
 15 above. A Bates numbered TIFF placeholder indicating that the document was provided in
 16 native format must accompany every native file.

17 I. **Requests for Other Native Files.** Other than as specifically set forth above, a producing
 18 Party need not produce documents in native format. If a Party would like a particular
 19 document produced in native format and this ESI Protocol does not require the production
 20 of that document in its native format, the Party making such a request shall explain the reason
 21 for its request that the document be produced in its native format. The requesting Party will
 22 provide a specific Bates range for documents it wishes to be produced in native format. The
 23 producing Party need only produce such a document in native format if reasonably
 24 practicable. Any native files that are produced should be produced with a link in the
 25 NativeLink field, along with all extracted text and applicable metadata fields set forth in
 26 Appendix 1.

27 J. **Confidentiality Designation.** Responsive documents in TIFF format will be stamped with
 28 the appropriate confidentiality designations in accordance with the Protective Order entered
 29 in this matter. Each responsive document produced in native format will have its
 30 confidentiality designation identified in the filename of the native file and indicated on its
 31 corresponding TIFF placeholder.

32 K. **Databases and Other Structured Data.** The parties shall meet and confer regarding the
 33 production format and scope of data contained in databases in order to ensure that any
 34 information produced is reasonably usable by the receiving party and that its production does
 35 not impose an undue burden on the producing party. To avoid doubt, information will be
 36 considered reasonably usable when produced in CSV format, tab-delimited text format,
 37 Microsoft Excel format, or Microsoft Access format. To the extent a party is constrained
 38 from producing responsive ESI because of a third-party license or because software
 39 necessary to view the ESI is hardware-dependent, the parties shall meet and confer in an
 40 attempt to reach an agreement on whether alternative methods exist to enable the requesting
 41 party to view the ESI.

42 L. **Paper Documents.** A producing Party may make paper documents available for inspection
 43 and copying in accordance with Federal Rule of Civil Procedure 34 or, additionally or

1 alternatively, scan and OCR paper documents. The following information shall be produced
2 in the load file accompanying production of paper documents produced by scan and OCR to
3 the extent reasonably practicable: (a) BegBates, (b) EndBates, (e) Custodian,
4 (f) Confidentiality, and (g) Redacted (Y/N). Paper documents should be logically unitized
5 for production to the extent reasonably practicable. Generally, when scanning paper
6 documents for production, distinct documents shall not be merged into a single record and
single documents shall not be split into multiple records. The Parties will make reasonable
efforts to unitize documents correctly. Where a document, or a document group – such as
7 folder, clipped bundle, or binder—has an identification spine or other label, the information
on the label shall be scanned and produced as the first page of the document or grouping to
the extent reasonably practicable.

8 M. **Date and Time.** No party shall modify the date or time as contained in any original ESI.
This provision does not prevent the parties from deleting inaccurate date or time information
9 that arises as an incident of collection or processing.

10 N. **Time Zone.** To the extent reasonably practicable, ESI items shall be processed using a
consistent time zone (e.g., Pacific Standard Time), and the time zone used shall be disclosed
11 to the requesting Party.

12 O. **Auto Date/Time Stamps.** To the extent reasonably practicable, ESI items shall be
processed so as to preserve the date/time shown in the document as it was last saved, not the
date of collection or processing.

13 P. **Hidden Text.** ESI items shall be processed, to the extent practicable, in a manner that
preserves hidden columns or rows, hidden text, worksheets, speaker notes, tracked changes,
and comments.

14 Q. **Password-Protected, Encrypted, or Proprietary-Software Files.** With respect to any ESI
15 items that are password-protected or encrypted within the scope of review, the producing
Party will take reasonable steps based on industry standards to break the protection so that
16 the documents can be reviewed and produced if appropriate. In the event that encrypted or
password-protected documents, which are reasonably likely to be responsive to a document
request, remain for a particular custodian after such reasonable efforts have been made, the
producing Party shall advise the requesting Party by producing a placeholder TIFF image
stating “Technical Issue.” ESI that cannot be reviewed because proprietary software is
necessary to view the ESI will be disclosed to a requesting Party, and the Parties shall meet
21 and confer regarding the next steps, if any, with respect to such ESI.

22

23

24

25

26

27

28